Calendar No. 576

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-475

EXTRADITION ACT OF 1981

JUNE 17 (legislative day, JUNE 8), 1982.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 1940]

The Committee on Foreign Relations, to which was referred sequentially from the Committee on the Judiciary the bill, S. 1940 to amend Chapter 209 of Title 18, United States Code, relating to extradition, and for other purposes, for the purpose of considering only "political offense" and related provisions, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 1940 is to modernize federal practices and procedures with respect to international extradition. The amendments to S. 1940 proposed by the Committee on Foreign Relations are intended to retain limited court jurisdiction with respect to application of the political offense exception in international extradition proceedings while providing specific guidance to the courts in making such findings. The proposed amendments carry forward in a slightly different format the proposal of the Judiciary Committee to provide the Secretary of State with the sole authority to inquire into the motivation of the foreign state in requesting extradition and to determine whether extradition would be incompatible with humanitarian considerations. In making either of the above determinations, the Secretary would be required to consult with the appropriate Bureaus and Offices of the Department of State, including the Bureau of Human Rights and Humanitarian Affairs.

BACKGROUND

The present bill, S. 1940, was originally introduced as S. 1639 on September 18, 1981, by Senator Thurmond. On December 11, 1981, Senator Thurmond introduced a clean bill, S. 1940, to incorporate

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changes that had been suggested during the course of the Judiciary Committee's consideration of the original bill. The changes of specific interest to the Committee on Foreign Relations were twofold, as the Report of the Committee on the Judiciary notes:

> First, S. 1940 as introduced made it mandatory—rather than discretionary—for the Secretary of State to deny extradition when he is persuaded that the requesting State is seeking the person's extradition "for a political offense or an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions." Second, as introduced, S. 1940 made it explicit in the statute that this determination would not be subject to judicial review. (Senate Report No. 97-331, p. 3.)

On February 3, 1982, Senator Percy wrote to Senator Thurmond and requested that S. 1940 be referred sequentially to the Committee on Foreign Relations for a reasonable period of time. The request for sequential referral was based in large part on the Committee's interest in those aspects of S. 1940 concerning the "political offense exception"—a standard provision in U.S. bilateral extradition treaties. The request for sequential referral was also prompted by the longstanding interest of the Committee in matters concerning international extradition stemming from the Committee's primary jurisdiction over all treaties, including those relating to extradition. For example, during the first session of the 97th Congress, the Committee on Foreign Relations considered and favorably reported two extradition treaties: a U.S.-Colombian agreement and a U.S.-Netherlands agreement. Six extradition treaties were approved by the Committee during the 96th Congress.

On April 15, the Committee on the Judiciary reported S. 1940 with Committee amendments. Specifically of interest to the Committee on Foreign Relations, the Judiciary Committee amended section 3196(a) of S. 1940 to provide that the Secretary of State's authority to determine application of the political offense exception would be subject to judicial review and be upheld by the reviewing court if it is supported by susbtantial evidence.

Committee Action

S. 1940, as reported by the Committee on the Judiciary, was referred to the Committee on Foreign Relations on April 19.

Following referral, majority and minority staff of the Committee jointly reviewed the record from the three days of hearings held in the House and Senate on revision in the extradition law. Staff also consulted with and reviewed the comments of representatives of the Departments of Justice and State, the staffs of the House and Senate Judiciary Committees, a panel of experts assembled by the American Societ of International Law, representatives from the American Civil Liberties Union, practicing attorneys, and scholars concerning S. 1940 and the poltical offense exception.

At its business meeting on May 19, the Committee met to consider its proposed amendments to S. 1940, as reported by the Committee on the Judiciary on April 15. The proposed amendments concerned the

political offense exception and related provisions as set forth in S. 1940. Following discussion of S. 1940, the Committee by voice vote with a quorum present unanimously approved the proposed amendments described in this Report.

Committee Comments

The political offense exception is a standard provision in U.S. extradition treaties and in its usual form provides that there shall be no extradition for crimes of a political nature. Political offenses are generally divided into two classes—"pure" political offenses and "relative" political offenses. Pure political offenses include treason, sedition, and espionage: crimes of political dissent that can only be committed against the state. Relative political offenses involve common crimes that are linked to political motivation or circumstances. Under one commonly-used standard, extradition for such offenses has been barred when the state from which extradition is sought determines that the political content of the act outweighs the harm that may have been done in committing the offense. This attitude, according to a leading expert, resulted from the "growth and evolution of political institutions towards the liberal state (which) together with the rise of individualism sparked the concern for the political offender, especially where he had escaped from a nation with more 'benighted' views of government." [1]

Another expert has characterized the exception in the following terms:

> The political offense exception is the embodiment of the notion that political dissenters or rebels ought not be turned over for trial and punishment to the very government which they have opposed. This concept is now well accepted in customary international law . . . It is in keeping with the very purpose of the political offense exception that its definition be a flexible one, which may encompass and protect a broad range of legitimate political dissent. A broad definition need not be a mechanistic or all-inclusive one. The word "political" may have different meanings in different contexts, and the United States is under no legal or moral obligation to shelter a fugitive from extradition simply because he claims a political motive for his crime. (Professor Steven Lubet testifying before the House Committee on the Judiciary, Subcommittee on Crime, February 3, 1982).[2]

While the assertion of a "pure" political offense is seldom at issue in extradition proceedings, claims of "relative" political offenses have been litigated in a number of extradition cases and have generated considerable academic debate about its present day utility. During the past decade, particular concern has been raised over the use of the exception to bar extradition for acts of international terrorism which ostensibly are associated with political activity or protest. For example, in two recent cases, by convincing the courts to invoke the

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[1] Epps, Valerie. "The Validity of the Political Offender Exception in Anglo-American Jurisprudence." *Harvard International Law Journal*, Winter 1979, pp. 69–88.

[2] Professor Steven Lubet testifying before the House Committee on the Judiciary, Subcommittee on Crime, February 3, 1982.

political offense exception, members of the Provisional Irish Republican Army (PIRA) successfully resisted extradition to the United Kingdom for violent crimes that they were alleged to have committed again a British soldier and government property.[3] However, in another case involving a PLO member, Zyad Abu Eain, who was sought by the Israeli government for his participation in a bombing randomly directed at civilians in a marketplace in the country, the court refused to apply the political offense exception.[4] Subsequently, Abu Eain was extradited to Israel to stand trial.

The PIRA cases and the case of Abu Eain have raised serious questions about the ability of the courts to interpret consistently the political offense exception. Both the Carter and Reagan Administrations have argued that because of loose and inconsistent application of the exception, the United States may be viewed by international terrorists as a potential safehaven where their crimes may go unpunished if presented in the guise of justifiable political actions. Consequently, both Administrations have urged successively that clear guidelines be established to guide the determination of political offense exceptions. It has also been suggested, as reflected in the version of S. 1940 reported by the Judiciary Committee that the courts are ill-equipped to decide issues that turn so heavily on questions of U.S. foreign policy and that, consequently, the Secretary of State should be vested with the sole authority to determine the application of the exception subject to limited judicial review.

PROPOSED AMENDMENTS BY THE COMMITTEE ON FOREIGN RELATIONS TO S. 1940 AS REPORTED BY THE COMMITTEE ON THE JUDICIARY

(1) On page 7, line 22, after the word "person" strike out the line and on line 23 strike out the words "character, or".

(2) On page 10, strike out line 19 through p. 11, line 11 and insert in lieu thereof the following:

"(e) POLITICAL OFFENSES AND OFFENSES OF A POLITICAL CHARACTER.—The court shall not find the person extraditable after a hearing under this section if the court finds that the person has established by clear and convincing evidence that any offense for which such person may be subject to prosecution or punishment if extradited is a political offense.

"(1) For the purposes of this section a political offense does not include—

"(A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

"(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

"(C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

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[3] United States v. Mackin—80 C.R. Misc.. 1 (S.D. N.Y. 1981) *Gov't Appeal Dismissed with Opinion, Sub Nom.*—F2d—1981.

[4] *Zyad Abu Eain* v. *Wilkes*, 641 F.2d 504 (7th Cir. 1981).

"(D) an offense with respect to which a multilateral treaty obligates the United States to either extradite or prosecute a person accused of the offense;

"(E) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs;

"(F) an attempt or conspiracy to commit an offense described in subparagraphs (A) through (E) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

"(2) For the purposes of this section a political offense, except in extraordinary circumstances, does not include—

"(A) an offense that consists of homicide, assault with intent to commit serious bodily injury, rape, kidnaping, the taking of a hostage, or a serious unlawful detention;

"(B) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

"(C) an attempt or conspiracy to commit an offense described in subparagraphs (A) or (B) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

"(f) DETERMINATION BY THE COURT OF THE APPLICATION OF THE POLITICAL OFFENSE EXCEPTION.—

"(1) Upon motion made by the person sought to be extradited or the Attorney General, the United States district court may order the determination of any issue under paragraph (e) of this section by a judge of such court.

"(2) No issue under paragraph (e) of this section shall be determined by the court and no evidence shall be received with respect to such issue unless and until the court determines the person sought is otherwise extraditable.

"(g) OTHER ISSUES.—

"(1) Any issue as to whether the foreign state is seeking extradition of a person for the purpose of prosecuting or punishing the person because of such person's political opinions, race, religion, or nationality shall be determined by the Secretary of State in the discretion of the Secretary of State.

"(2) Any issue as to whether the extradition of a person to a foreign state would be incompatible with humanitarian considerations shall be determined by the Secretary of State in the discretion of the Secretary of State.

"(3) In determining the application of subparagraphs (1) and (2) of this paragraph, the Secretary of State

shall consult with the appropriate Bureaus and Offices of the Department of State including the Bureau of Human Rights and Humanitarian Affairs.

"(h) CERTIFICATE OF FINDINGS TO THE SECRETARY OF STATE.—

"(1) If the court finds that the person is extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify its findings, together with a transcript of the proceedings, to the Secretary of State. The court shall order that the person be held in official detention until surrendered to a duly appointed agent of the foreign state, or until the Secretary of States declines to order the person's surrender.

"(2) If the court finds that the person is not extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify the findings, together with such report as the court considers appropriate, to the Secretary of State. The Attorney General may commence a new action for extradition of the person only with the agreement of the Secretary of State.".

(3) on page 13, line 13, after the word "justice" strike out the word "or" and insert in lieu thereof ".".

(4) on page 13, strike out lines 14 through p. 15, line 10.

(5) on page 15 after the number "(2)" on line 17 strike out through the word "opinions" in line 20.

(6) on page 15, line 21 after the word "review." Strike out through page 16, line 6.

SECTION-BY-SECTION ANALYSES OF THOSE PROVISIONS OF S. 1940 AS REPORTED BY THE COMMITTEE ON THE JUDICIARY, PROPOSED TO BE AMENDED BY THE COMMITTEE ON FOREIGN RELATIONS

The major provision of S. 1940, as reported by the Committee on the Judiciary, and their comparison to present federal law are set forth in Senate Report No. 97–331. The Report of the Committee on Foreign Relations relates solely to a discussion and analyses of the amendments set forth above as reported on May 19 by the Committee on Foreign Relations.

Section 3194 (a), as reported by the Committee on the Judiciary, provides that the courts do not have jurisdiction to determine whether extradition is sought for a political offense or because of a person's political belief. In turn, the authority to make such determinations is vested in the Secretary of State pursuant to Section 3196(a)(3).

According to the Report of the Judiciary Committee:

Section 3195 (a)(3) specifies that the Secretary of State must decline to order surrender of a person if, after taking into account certain statutory principles generally eliminating specified types of crimes from the political offense exception (e.g., crimes of violence and drug trafficking), he is persuaded that the person's extradition is sought for one of these reasons. The provisions taken together provide that the Secretary of State shall have jurisdiction to decide the ap-

> plicability of the "political offense" exception to extradition contained in most extradition treaties, such d cision to be consistent with the statutory guidelines and reviewable in the United States courts of appeal based on a substantial evidence standard. (Report No. 97–331, p. 14).

The Committee on Foreign Relations proposes amending section 3194(a), as reported by the Committee on the Judiciary, to permit the appropriate courts to make findings concerning the application of the political offense exception. While it can be argued that the Secretary of State is generally better able than the courts to assess the circumstances justifying a political offense exception, the Committee favors the retention of some role for the judicial process. Most countries with whom the U.S. has extradition agreements permit the courts to make such determinations. Moreover, American courts have reviewed political offense questions for nearly one hundred years. Preserving limited court jurisdiction to interpret the exception pursuant to legislative guidelines would continue this well-established tradition. It would also provide a check against an executive authority that could, depending upon the political sensitivities involved in a given case, result in inconsistent and unsound application of the political offense exception.

However, while the Committee on Foreign Relations has concluded that the courts should retain some jurisdiction over political offense cases, it is also very clear that in order to effect more consistent application of the exception, the courts must be given clearer guidelines with respect to certain classes of behavior that should never be considered political offense and others which should only be considered political offenses in extraordinary circumstances. This proposed guidance is set forth in section 3194(e)(1) and (e)(2) as reported by the Committee on Foreign Relations and closely resembles the guidelines proposed for the Secretary of State by the Judiciary Committee in section 3196(a)(3) as reported by that Committee.

The Committee on Foreign Relations has proposed its amendments to section 3194 of S. 1940 based on the belief that it is inappropriate to apply the political offense exception to conduct that the international community has taken formal steps to prohibit and punish. Drawing on this standard, the Committee has concluded that the political offense exception should not be considered by the court when to apply it would have the effect of protecting behavior that is specifically outlawed internationally. Included in this category would be offenses within the scope of either the Hague Convention on Seizure of Aircraft; the Montreal Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation; the Convention on the Physical Protection of Nuclear Materials; the International Convention Against the Taking of Hostages; the Convention on the Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents; other multilateral treaties obligating the U.S. to either extradite or prosecute persons whose offenses are contemplated by the applicable treaty; and the manufacture, sale, or distribution of narcotics. The proposed amendment creating section 3194(e)(1) establishes an absolute prohibition against the courts considering such acts to be political offenses. The intended effect of this prohibition is to deter international terrorists and other criminals from

using the United States as a safehaven from prosecution for crimes they claim to be political but whose characteristics violate overriding international legal standards.

While the Committee recognizes that current case law continues to apply to offenses not specified in section 3194(e)(1) or (e)(2), it believes that a different standard should apply to those offenses involving the use of firearms or explosives, or other behavior involving the use of force or violence as set forth in section 3194(2). In such cases, extraordinary circumstances must be demonstrated by the person resisting extradition in order for the appropriate court to find that a political offense has been committed. This standard is consistent with the guidelines already set forth in S. 1940 and allows for the political offense exception to be applied potentially in that very narrow class of cases where an otherwise common crime may be transformed by the political context in which it is committed.

The Committee intends that the burden of the person resisting extradition in demonstrating such extraordinary circumstances should be a considerable one. While current case law may provide useful guidance it is not intended, for example, that the mere existence of a rebellion, civil war, riot or other disturbance, during which the offense in question is committed, should result in a finding that the offense itself is political in nature.[5] Nor should it be sufficient simply to show that the motivation of the individual committing the act—however sincere or noble—was related to a political objective. It should not be the policy of the United States to encourage or condone violent or other criminal behavior simply because it is the view of the persons committing such acts that they are somehow connected with a political activity or have an obstensible political purpose or justification. However, it should also not be the policy of the United States to render up automatically to foreign authorities an individual who, in the course of seeking to exercise legitimate civil or political rights in a non-violent manner, is placed in such a position that he has no reasonable choice except to commit an otherwise criminal act. For the court to make such a determination the test should be focused upon the individual and whether the offense for which he is sought was a consequence of the violation of his internationally recognized civil or political rights by the state requesting extradition. Acts of indiscriminate or excessive violence or acts of deliberate brutality would presumably never fall within the exception.

In short, while the occasions for recognizing the political offense exception will necessarily be few and far between, the Committee believes that it should continue to be within the authority of U.S. courts to determine that the exception should apply, subject to the procedural innovations and exclusions introduced in this legislation.

The belief that such findings are expected to be rare is further reinforced by the amendment proposed by the Foreign Relations Commit-

[5] Two recent decisions in particular, the *Mackin* and *McMullen* cases, applied what is generally called the "Castioni test", after the 19th century English case of *In re Castioni* which is commonly understood as having established a two-part test which must be met for a common crime to be regarded as a relative political offense: (1) the act must have been committed during an uprising, involving a group of which the accused was a member; and (2) the act must have been "incidental to" the political uprising, that is, done in furtherance of or with the intention of assisting the uprising. The court in *Castioni* justified its decision not to extradite by saying that "one cannot look too hardly and weigh in golden scales the acts of men hot in their political excitement." Applying this test, the courts in the above-mentioned cases denied requests by the Government of the United Kingdom for the extradition of two members of the Provisional Irish Republican Army who were alleged to have committed violent crimes in Northern Ireland but which were deemed "political offenses" by the U.S. courts.

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tee in section 3194(e) providing that the person claiming application of the exception much establish by *clear and convincing* evidence that any offense for which such person may be subject to prosecution or punishment if extradited is a political offense. This necessarily includes offenses that may not be subject to the extraordinary circumstances standard established in section 3194(e)(2). Shifting the burden of the proof to the person seeking application of the political offense exception reinforces the Committee's belief that its legitimate application should be infrequent and also in accords with the guidelines established in section 3194(e) (1) and (2).

Section 3194(g)(1) and (g)(2) restrict the jurisdiction of the courts with respect to questions that may turn largely on the conduct of U.S. foreign policy, thus falling within the domain of the executive branch. Section 3194(g)(1) clearly establishes the sole authority of the Secretary of State to deny extradition if a foreign state is seeking the person's return for the purposes of prosecuting or punishing the person because of his or her political opinions, race, religion, or nationality and if the applicable extradition agreement provides the Secretary with the authority to deny extradition for such reasons. This authority would, when applicable, follow the rule of non-inquiry whereby the courts refrain from making findings on issues largely concerned with the internal political or social circumstances in a foreign state. The Secretary of State, however, is considered uniquely qualified to make such inquiries as this practice is already a significant aspect of his foreign policymaking responsibilities. Section 3194(g)(2) provides the Secretary with the sole authority to determine if the person's extradition is incompatible with humanitarian considerations, such as the age or infirmity of the person being sought as well as the proportionality of the punishment that may be imposed in relation to the crime that may have been committed. This authority may be exercised so long as the applicable extradition agreement provides the Secretary with the authority to deny extradition for such reasons. Sections 3194(g)(1) and (g)(2) should in most cases provide the preferred basis for appropriate relief from extradition on grounds consistent with the traditions, heritage, and foreign policy principles of this country. Further, the Committee on Foreign Relations considers it desirable to provide for the authority established in sections 3194(g)(1) and (g)(2) in any future extradition agreements to which the United States may become a party.

Section 3194(g)(3) as proposed by the Committee on Foreign Relations requires the Secretary of State to consult with the appropriate Offices and Bureaus of the Department of State, including the Bureau of Human Rights and Humanitarian Affairs. Requiring the Secretary to consult with that Bureau is intended to ensure that the Secretary is fully advised on the political and social conditions in the foreign state at issue. It also reinforces the Committee's belief that determinations by the Secretary of State concerning foreign state motivation in requesting extradition, as well as any determinations involving humanitarian considerations, should build upon existing principles governing asylum requests. As such they should be executive determinations and not judicial findings. Presently, the Bureau of Human Rights and Humanitarian Affairs advises the Secretary of State and the Department

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of Justice on asylum issues. The proposed amendment is, therefore, in keeping with the Bureau's current role in such matters.

The remaining amendments proposed by the Committee on Foreign Relations and contained in section 3196 of S. 1940 as reported by the Committee on the Judiciary are technical revisions setting forth the authority of the Secretary of State in matters relating to international extradition in accordance with the amendments proposed by the Committee on Foreign Relations in section 3194 supra.

Cost Estimate

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides the following estimate of the cost of S. 1940 prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 28, 1982.

Hon. Charles H. Percy,
Chairman, Committee on Foreign Relations,
U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Office has reviewed S. 1940, the Extradition Act of 1981, as ordered reported by the Senate Committee on Foreign Affairs, May 24, 1982.

This bill will amend chapter 209, title 18, United States Code, by revising federal statutes that implement U.S. extradition treaties with foreign countries. Designed to improve the effectiveness and efficiency of international extradition, S. 1940 allows foreign fugitives to waive extradition proceedings if they are willing to return to the requesting country. It allows for a simplified appeals process and in appropriate cases, the use of a summons instead of a warrant of arrest. S. 1940 codifies the current practice of providing legal counsel and requires a speedy determination of extradition request. It permits the United States to secure a warrant for the arrest of a foreign fugitive even when the fugitive's whereabouts are unknown. The bill also grants the federal courts the authority to determine whether the requesting country is seeking extradition of a person for a political offense, for an offense of a political character, or for the purpose of prosecuting or punishing a person for his political opinions.

It appears that no significant additional cost to the government would be incurred as a result of enactment of this bill, and that some small savings may result from improved efficiencies and from the streamlining of the international extradition statutes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin,
Director.

Evaluation of Regulatory Impact

In accordance with Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee has concluded that there is no regulatory impact from S. 1940.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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[CHAPTER 209—EXTRADITION

[CHAPTER 209—INTERSTATE RENDITION

[Sec.
[3181. Scope and limitation of chapter.
[3182. Fugitives from State or Territory to State, District or Territory.
[3183. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of United States.
[3184. Fugitives from foreign country to United States.
[3185. Fugitives from country under control of United States into the United States.
[3186. Secretary of State to surrender fugitive.
[3187. Provisional arrest and detention within extraterritorial jurisdiction.
[3188. Time of commitment pending extradition.
[3189. Place and character of hearing.
[3190. Evidence on hearing.
[3191. Witnesses for indigent fugitives.
[3192. Protection of accused.
[3193. Receiving agent's authority over offenders.
[3194. Transportation of fugitive by receiving agent.
[3195. Payment of fees and costs.]
Sec.
3181. Fugitives from State or Territory to State, District, or Territory.
3182. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of the United States.
3183. Payment of fees and costs.

[§ 3181. Scope and limitation of chapter

[The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any treaty of extradition with such foreign government.]

[§ 3182.] § *3181.* Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive author-

ity of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the persons demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

[§ 3183.] § *3182*. Fugitives from State, Territory, or Possession into extraterritorial jurisdiction of United States

Whenever the executive authority of any State, Territory, District, or possession of the United States [or the Panama Canal Zone], demands any American citizen or national as a fugitive from justice who has fled to a country in which the United States exercises extraterritorial jurisdiction, and produces a copy of an indictment found or an affidavit made before a magistrate of the demanding jurisdiction, charging the fugitive so demanded with having committed treason, felony, or other offense, certified as authentic by the Governor or chief magistrate of such demanding jurisdiction, or other person authorized to act, the officer or representative of the United States vested with judicial authority to whom the demand has been made shall cause such fugitive to be arrested and secured, and notify the executive authorities making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

If no such agent shall appear within three months from the time of the arrest, the prisoner may be discharged.

The agent who receives the fugitive into his custody shall be empowered to transport him to the jurisdiction from which he has fled.

All costs or expenses incurred in any interstate rendition proceeding and apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

[§ 3184. Fugitives from foreign country to United States

[Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together

with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

[§ 3185. Fugitives from country under control of United States into the United States

[Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who, having violated the criminal laws in force therein by the commission of any of the offenses enumerated below, departs or flees from justice therein to the United States, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed.

[(1) Murder and assault with intent to commit murder;

[(2) Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money;

[(3) Counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same;

[(4) Forgery or altering and uttering what is forged or altered;

[(5) Embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries;

[(6) Larceny or embezzlement of an amount not less than $100 in value;

[(7) Robbery;

[(8) Burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein;

[(9) Breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein;

[(10) Entering, or breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein;

[(11) Perjury or the subornation of perjury;

[(12) Rape;

[(13) Arson;

[(14) Piracy by the law of nations;

[(15) Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government;

[(16) Malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

[This chapter, so far as applicable, shall govern proceedings authorized by this section. Such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged.

[No return or surrender shall be made of any person charged with the commission of any offense of a political nature.

[If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.

[§ 3186. Secretary of State to surrender fugitive

[The Secretary of State may order the person committed under sections 3184 or 3185 of this title to be delivered to any authorized agent of such foreign government, to be tried for the offense of which charged.

[Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty.

[A person so accused who escapes may be retaken in the same manner as any person accused of any offense.

[§ 3187. Provisional arrest and detention within extraterritorial jurisdiction

[The provisional arrest and detention of a fugitive, under sections 3042 and 3183 of this title, in advance of the presentation of formal proofs, may be obtained by telegraph upon the request of the authority competent to request the surrender of such fugitive addressed to the authority competent to grant such surrender. Such request shall be accompanied by an express statement that a warrant for the fugitive's arrest has been issued within the jurisdiction of the authority making such request charging the fugitive with the commission of the crime for which his extradition is sought to be obtained.

[No person shall be held in custody under telegraphic request by virtue of this section for more than ninety days.

[§ 3188. Time of commitment pending extradition

[Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, any judge of the United States, or of any State. upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

[§ 3189. Place and character of hearing

[Hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

[§ 3190. Evidence on hearing

[Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

[§ 3191. Witnesses for indigent fugitives

[On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or magistrate hearing the matter may order that such witnesses be subpenaed; and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpenaed in behalf of the United States.

[§ 3192. Protection of accused

[Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safekeeping and protection of the accused.

[§ 3193. Receiving agent's authority over offenders

[A duly appointed agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

[§ 3194. Transportation of fugitive by receiving agent

[Any agent appointed as provided in section 3182 of this title who receives the fugitive into his custody is empowered to transport him to the State or Territory from which he has fled.

[§ 3195. Payment of fees and costs

[All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

[All witness fees and costs of every nature in cases of international extradition, including the fees of the magistrate, shall be certified by the judge or magistrate before whom the hearing shall take place to the Secretary of State or the United States, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Department of Justice as the case may be.

[The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States.]

CHAPTER 210—INTERNATIONAL EXTRADITION

Sec.

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§ 3191. Extradition authority in general

The United States may extradite a person to a foreign state pursuant to this chapter only if—

(a) there is a treaty concerning extradition between the United States and the foreign state; and

(b) the foreign state requests extradition within the terms of the applicable treaty.

§ 3192. Initial procedure

(a) IN GENERAL.—The Attorney General may file a complaint charging that a person is extraditable. The Attorney General shall file the complaint in the United States district court—

(1) for the district in which the person may be found; or

(2) for the District of Columbia, if the Attorney General does not know where the person may be found.

(b) COMPLAINT.—The complaint shall be made under oath or affirmation and shall specify the offense for which extradition is sought. The complaint—

(1) shall be accompanied by a copy of the request for extradition and by the evidence and documents required by the applicable treaty; or

(2) if not accompanied by the materials specified in paragraph (1)—

(A) shall contain—

(i) information sufficient to identify the person sought;

(ii) a statement of the essential facts constituting the offense that the person is believed to have committed, or a statement that an arrest warrant for the person is outstanding in the foreign state; and

(iii) a description of the circumstances that justify the person's arrest; or

(B) shall contain such other information as is required by the applicable treaty;

and shall be supplemented before the extradition hearing by the materials specified in paragraph (1).

(c) ARREST OR SUMMONS.—Upon receipt of a complaint, the court shall issue a warrant for the arrest of the person sought, or, if the Attorney General so requests, a summons to the person to appear at an extradition hearing. The warrant or summons shall be executed in the manner prescribed by rule 4(d) of the Federal Rules of Criminal Procedure. A person arrested pursuant to this section shall be taken without unnecessary delay before the nearest available court for an extradition hearing.

(d) DETENTION OR RELEASE OF ARRESTED PERSON.—

(1) the court shall order that a person arrested under this section be held in official detention pending the extradition hearing unless the person establishes to the satisfaction of the court that special circumstances require his release.

(2) Unless otherwise provided by the applicable treaty, if a person is detained pursuant to paragraph (1) in a proceeding in which the complaint is filed under subsection (b)(2), and if, within sixty days of the person's arrest, the court has not received—

(A) the evidence or documents required by the applicable treaty; or

(B) notice that the evidence or documents have been received by the Department of State and will promptly be transmitted to the court;

the court may order that the person be released from official detention pending the extradition hearing.

(3) If the court orders the release of the person pending the extradition hearing, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

§ 3193. Waiver of extradition hearing and consent to removal

(a) INFORMING THE COURT OF WAIVER AND CONSENT.—A person against whom a complaint is filed may waive the requirements of formal extradition proceedings, including an order of surrender, by informing the court that he consents to removal to the foreign state.

(b) INQUIRY BY THE COURT.—The court, upon being informed of the person's consent to removal, shall—

(1) inform the person that he has a right to consult with counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3006A; and

(2) address the person to determine whether his consent is—

(A) voluntary, and not the result of a threat or other improper inducement; and

(B) given with full knowledge of its consequences, including the fact that it may not be revoked after the court has accepted it.

(c) FINDING OF CONSENT AND ORDER OF REMOVAL.—If the court finds that the person's consent to removal is voluntary and given with full knowledge of its consequences, it shall, unless the Attorney General notifies the court that the foreign state or the United States objects to such removal, order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition. The court shall order that the person be held in official detention until surrendered.

(d) LIMITATION ON DETENTION PENDING REMOVAL.—A person whom the court orders surrendered pursuant to subsection (c) may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings, the person is not removed from the United States within thirty days after the court ordered the person's surrender. The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

§ 3194. Extradition hearing

(a) IN GENERAL.—The court shall hold a hearing to determine whether the person against whom a complaint is filed is extraditable, unless the hearing is waived pursuant to section 3193. The purpose of the hearing is limited. The court does not have jurisdiction to determine the merits of the charge against the person by the foreign state or to determine whether the foreign state is seeking the extradition of the person for the purpose of prosecuting or punishing the person for his political opinions. The hearing shall be held as soon as practicable after the arrest of the person or issuance of the summons.

(b) RIGHTS OF THE PERSON SOUGHT.—The court shall inform the person of the limited purpose of the hearing, and shall inform him that—

(1) he has the right to be represented by counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3006A; and

(2) he may cross-examine witnesses who appear against him and may introduce evidence in his own behalf with respect to the matters set forth in subsection (d).

(c) EVIDENCE.—

(1) A deposition, warrant, or other document, or a copy thereof, is admissible as evidence in the hearing if—

(A) it is authenticated in accordance with the provisions of an applicable treaty or law of the United States;

(B) it is authenticated in accordance with the applicable law of the foreign state, and such authentication may be established conclusively by a showing that—

(i) a judge, magistrate, or other appropriate officer of the foreign state has signed a certification to that effect; and

(ii) a diplomatic or consular officer of the United States who is assigned or accredited to the foreign state, or a diplomatic or consular officer of the foreign state who is assigned or accredited to the United States, has

certified the signature and position of the judge, magistrate, or other officer; or

(C) other evidence is sufficient to enable the court to conclude that the document is authentic.

(2) A certificate or affidavit by an appropriate official of the Department of State is admissible as evidence of the existence of a treaty or its interpretation.

(3) If the applicable treaty requires that such evidence to presented on behalf of the foreign state as would justify ordering a trial of the person if the offense had been committed in the United States, the requirement is satisfied if the evidence establishes probable cause to believe that an offense was committed and that the person sought committed it.

(d) FINDINGS.—The court shall find that the person is extraditable if it finds that—

(1) there is probable cause to believe that the person arrested or summoned to appear is the person sought in the foreign state;

(2) the evidence presented is sufficient to support the complaint under the provisions of the applicable treaty;

(3) no defense to extradition specified in the applicable treaty, and within the jurisdiction of the court, exists; and

(4) the act upon which the request for extradition is based would constitute an offense punishable under the laws of—

(A) the United States;

(B) the state where the fugitive is found; or

(C) a majority of the States.

The court may base a finding that a person is extraditable upon evidence consisting, in whole or in part, of hearsay or of properly certified documents.

"(e) POLITICAL OFFENSES AND OFFENSES OF A POLITICAL CHARACTER.—The court shall not find the person extraditable after a hearing under this section if the court finds that the person has established by clear and convincing evidence that any offense for which such person may be subject to prosecution or punishment if extradited is a political offense.

"(1) For the purposes of this section a political offense does not include—

"(A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

"(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

"(C) a serious offense involving an attack against the life, physical integrity, or liberty of internationally protected persons (as defined in section 1116 of this title), including diplomatic agents;

"(D) an offense with respect to which a multilateral treaty obligates the United States to either extradite or prosecute a person accused of the offense;

"(E) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs;

"(F) an attempt or conspiracy to commit an offense described in subparagraphs (A) through (E) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

"(2) For the purposes of this section a political offense, except in extraordinary circumstances, does not include—

"(A) an offense that consist of homicide, assault with intent to commit serious bodily injury, rape, kidnaping, the taking of a hostage, or a serious unlawful detention;

"(B) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

"(C) an attempt or conspiracy to commit an offense described in subparagraphs (A) or (B) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

"(f) DETERMINATION BY THE COURT OF THE APPLICATION OF THE POLITICAL OFFENSE EXCEPTION.—

"(1) Upon motion made by the person sought to be extradited or the Attorney General, the United States district court may order the determination of any issue under paragraph (e) of this section by a judge of such court.

"(2) No issue under paragraph (e) of this section shall be determined by the court and no evidence shall be received with respect to such issue unless and until the court determines the person sought is otherwise extraditable.

"(g) OTHER ISSUES.—

"(1) Any issue as to whether the foreign state is seeking extradition of a person for the purpose of prosecuting or punishing the person because of such person's political opinions, race, religion, or nationality shall be determined by the Secretary of State in the discretion of the Secretary of State.

"(2) Any issue as to whether the extradition of a person to a foreign state would be incompatible with humanitarian considerations shall be determined by the Secretary of State in the discretion of the Secretary of State.

"(3) In determining the application of subparagraphs (1) and (2) of this paragraph, the Secretary of State shall consult with the appropriate Bureaus and Offices of the Department of State including the Bureau of Human Rights and Humanitarian Affairs.

"(h) CERTIFICATION OF FINDINGS TO THE SECRETARY OF STATE.—

"(1) If the court finds that the person is extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify its findings, together with a transcript of the proceedings, to the Secretary of State. The court shall order that the person be held in official detention until surrendered to a duly appointed agent of the foreign state, or until the Secretary of State declines to order the person's surrender.

"(2) If the court finds that the person is not extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify the findings, together with such report as the

court considers appropriate, to the Secretary of State. The Attorney General may commence a new action for extradition of the person only with the agreement of the Secretary of State.".

§ 3195. Appeal

(a) IN GENERAL.—Either party may appeal, to the appropriate United States court of appeals, the findings by the district court on a complaint for extradition. The appeal shall be taken in the manner prescribed by rules 3 and 4(b) of the Federal Rules of Appellate Procedure, and shall be heard as soon as practicable after the filing of the notice of appeal. Pending determination of the appeal, the district court shall stay the extradition of a person found extraditable.

(b) DETENTION OR RELEASE PENDING APPEAL.—If the district court found that the person sought is—

(1) extraditable, it shall order that the person be held in official detention pending determination of the appeal, or pending a finding by the court of appeals that the person has established that special circumstances require his release;

(2) not extraditable, it shall order that the person be released pending determination of an appeal unless the court is satisfied that the person is likely to flee or to endanger the safety of any other person or the community.

If the court orders the release of a person pending determination of an appeal, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

(c) SUBSEQUENT REVIEW.—No court has jurisdiction to review a finding that a person's extraditable unless the person has exhausted his remedies under subsection (a). If the person files a petition for habeas corpus or for other review, he shall specify whether the finding that he is extraditable has been upheld by a court, and, if so, shall specify the court, the date, and the nature of each such proceeding. A court does not have jurisdiction to entertain a person's petition for habeas corpus or for other review if his commitment has previously been upheld, unless the court finds that the grounds for the petition or appeal could not previously have been presented.

§ 3196. Surrender of a person to a foreign state

(a) RESPONSIBILITY OF THE SECRETARY OF STATE.—If a person is found extraditable pursuant to section 3194, the Secretary of State, upon consideration of the provisions of the applicable treaty and this chapter—

(1) may order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition;

(2) may order such surrender of the person contingent on the acceptance by the foreign state of such conditions as the Secretary considers necessary to effectuate the purposes of the treaty or the interest of justice.

The Secretary may order the surrender of a person who is a national of the United States unless such surrender is expressly forbidden by the applicable treaty or by the laws of the United States. A decision

of the Secretary under paragraph (1) or (2) is final and is not subject to judicial review.

(b) NOTICE OF DECISION.—The Secretary of State, upon ordering a person's surrender or denying a request for extradition in whole, or in part, shall notify the person sought, the diplomatic representative of the foreign state, the Attorney General, and the court that found the person extraditable. If the Secretary orders the person's surrender, he also shall notify the diplomatic representative of the foreign state of the time limitation on the person's detention that is provided by subsection (c)(2).

(c) LIMITATION ON DETENTION PENDING DECISION OR REMOVAL.—A person who is found extraditable pursuant to section 3194 may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings—

(1) the Secretary does not order the person's surrender, or decline to order the person's surrender, within forty-five days after his receipt of the court's findings and the transcript of the proceedings; or

(2) the person is not removed from the United States within thirty days after the Secretary ordered the person's surrender.

The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

§ 3197. Receipt of a person from a foreign state

(a) APPOINTMENT AND AUTHORITY OF RECEIVING AGENT.—The Attorney General shall appoint an agent to receive, from a foreign state, custody of a person accused of a Federal, State, or local offense. The agent shall have the authority of a United States marshal. The agent shall convey the person directly to the Federal or State jurisdiction that sought his return.

(b) TEMPORARY EXTRADITION TO THE UNITED STATES.—If a foreign state delivers custody of a person accused of a Federal, State, or local offense to an agent of the United States on the condition that the person be returned to the foreign state at the conclusion of criminal proceedings in the United States, the Bureau of Prisons shall hold the person in custody pending the conclusion of the proceedings, and shall then surrender the person to a duly appointed agent of the foreign state. The return of the person to the foreign state is not subject to the requirements of this chapter.

§ 3198. General provisions for chapter

(a) DEFINITIONS.—As used in this chapter—

(1) "court" means—

(A) a United States district court established pursuant to section 132 of title 28, United States Code, the District Court of Guam, the District Court of the Virgin Islands, or the District Court of the Northern Mariana Islands; or

(B) a United States magistrate authorized to conduct an extradition proceeding;

(2) "foreign state", when used in other than a geographic sense, means the government of a foreign state;

(3) "foreign state", when used in a geographic sense, includes all territory under the jurisdiction of a foreign state, including a colony, dependency, constituent part of the state; its air space and territorial waters; and vessels or aircraft registered in the state;

(4) "treaty" includes a treaty, convention, or international agreement, bilateral or multilateral, that is in force after advice and consent by the Senate; and

(5) "warrant", as used with reference to a foreign state, means any judicial document authorizing the arrest or detention of a person accused or convicted of a crime.

(b) PAYMENT OF FEES AND COSTS.—Unless otherwise specified by treaty, all transportation costs, subsistence expenses, and translation costs incurred in connection with the extradition or return of a person at the request of—

(1) a foreign state, shall be borne by the foreign state unless the Secretary of State directs otherwise;

(2) a State, shall be borne by the State; and

(3) the United States, shall be borne by the United States.

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